



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

July 31, 2019

Jeff Weiss
President
Lesley University
29 Everett Street
Cambridge, MA 02138
Via email to: jweiss@lesley.edu

Re: Complaint No. 01-18-2146
Lesley University

Dear Jeff Weiss:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against Lesley University (University). The Complainant alleged that the University discriminated against her on the basis of her disability. Specifically, the complaint alleges that the University failed to respond to her complaint that a professor subjected her to disability-based harassment. As explained further below, before OCR completed its investigation, the University expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement (Agreement), and OCR determined that such a resolution was appropriate.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive federal financial assistance from the Department. Because the University receives federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Section 504.

Summary of Preliminary Investigation

During the investigation, OCR reviewed documents provided by the Complainant and the University; and interviewed the Complainant and University faculty/staff.

Background

The University advised OCR that the Complainant began her graduate studies in an Expressive Therapies graduate certificate program at Lesley University in the Fall of 2017. University. According to documentation submitted by the University, the Complainant was registered with the University as a student with a disability and entitled to certain academic adjustments.¹

¹ Among other provisions, the Complainant's academic adjustments included allowing her to take breaks during class as needed.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

The Complainant advised OCR that on or about March 2, 2018, she met with the professor of her drama therapy course (the course) to discuss the letter from the disability office granting her academic adjustments, and the professor reviewed and signed the letter. The Complainant also advised OCR that the professor left the letter out for others to view. The professor stated that she had no specific recollection of leaving the letter out; she noted that she had signed many such letters and her usual practice was to put them into her notebook, but she had no specific recollection of doing so here.

The Complainant told OCR that on or about March 3, 2018, during class she asked to go to the store to buy a drink so she could take her medication and the professor told her that she could not do so, even though her accommodation letter stated that she could take breaks. The Complainant also advised OCR that during this exchange, the professor discussed her academic adjustments and disability in front of the class.

The Complainant also stated that on or about March 25, 2018, during a weekend class, the professor told her she did not care about her academic adjustments letter, and that if the Complainant left class she would assign her more work; and the professor yelled at her several times during class, and continued to discuss her academic adjustments and disabilities in front of the class. The Complainant told OCR the experience was degrading. When interviewed by OCR, the professor denied discussing the Complainant's academic adjustments and disability in front of class, but admitted to raising her voice toward the Complainant on one occasion when the Complainant was speaking loudly at the entrance to the classroom during the class, interrupting other students' work, and not responding to the professor's non-verbal cues to lower her voice. The professor told OCR that it was the Complainant who yelled at and insulted the professor, and that the professor always sought to keep their interactions polite and private. According to documents provided by the University, the Complainant emailed the Director of Disability and Access Services (Director) during the final class to complain about the professor's conduct during class. The University reported that with one hour remaining during the final class, the Complainant left the course without completing her final presentation, and spoke rudely to the professor on the way out the door.

The University acknowledged that during a phone call with the Director on March 26, 2018, the Complainant criticized the professor's demeanor and teaching style, including that the professor yelled at and embarrassed students during class and targeted the Complainant in particular to embarrass and degrade. The University also reported that during the call, the Complainant claimed that the professor told her that regardless of her academic adjustments, if she took breaks or left class, she would be required to complete additional assignments. The University also produced an email dated April 1, 2018, from another student in the class, to the University's Manager of Community Engagement and Social Programs for the Graduate School of Arts and Social Sciences (Manager). The student reported that the Complainant had a medical condition requiring medication, and that the professor "would continually give the [Complainant] a hard time if they needed to get water or coffee to take their medication or if they sat out for an exercise." The student reported that she wished to "submit a formal complaint" about this "bullying." The Manager forwarded the complaint to, *inter alia*, Disability Services, and noted that "[t]his complaint is actually a big enough issue that I believe it warrants harassment."

The Complainant alleged that the University failed to respond appropriately to her complaint that the professor subjected her to disability-based harassment. The University advised OCR that the University interpreted and treated her complaint as an allegation that the professor denied the Complainant her approved academic adjustments, rather than an allegation that the professor engaged in disability-based harassment.

Allegation 1:

The Complainant alleges that the University discriminated against her on the basis of her disability. Specifically, the complaint alleges that the University failed to respond to her complaint that a professor subjected her to disability-based harassment.

Legal Standard

A University's failure to respond promptly and effectively to disability-based harassment about which it knew or should have known, and that is sufficiently serious that it creates a hostile environment, is a form of discrimination prohibited Section 504. A University may also violate Section 504 if an employee engages in disability-based harassment of students in the context of the employee carrying out his/her responsibility to provide benefits and services, regardless of whether the University had notice of the employee's behavior. Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; physical conduct; or other conduct that may be physically threatening, harmful, or humiliating. Harassment creates a hostile environment when the conduct is sufficiently severe or pervasive as to interfere with or limit a student's ability to participate in or benefit from the University's programs, activities, or services. When such harassment is based on disability, it violates Section 504.

To determine whether a hostile environment exists, OCR considers the totality of the circumstances from both an objective and subjective perspective and examines the context, nature, scope, frequency, duration, and location of incidents, as well as the identity, number, and relationships of the persons involved. Harassment must consist of more than casual, isolated incidents to constitute a hostile environment.

When responding to harassment, a University must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. If an investigation reveals that discriminatory harassment has occurred, a University must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

Analysis

OCR notes that at this point in the investigation, it is not entirely clear whether the Complainant made a complaint of disability-based harassment, rather than a complaint of bullying or

mistreatment by the professor. Nevertheless, OCR notes that the University was on notice of a complaint of disability-based harassment concerning these circumstances, due to the concerns raised by the Complainant's classmate in the April 1, 2018, email, which the Manager appears to have recognized as a complaint of disability-based harassment. OCR also notes that the conduct complained of was allegedly committed by a University employee in the course of her official duties.

At this point in the investigation, OCR does not have information as to whether the University investigated whether the professor engaged in disability-based harassment which subjected the Complainant to a hostile environment. Prior to OCR completing its investigation and making a determination, the University expressed a willingness to resolve the allegation with a voluntary resolution agreement, and signed the Agreement on July 31, 2019.

Conclusion/Resolution

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions, you may contact Civil Rights Attorney James Moser at (617) 289-0146 or by e-mail at james.moser@ed.gov.

Sincerely,

/s/

Michelle Kalka
Compliance Team Leader

Enclosure

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